

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 373 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DASHRATHLAL RAMANLAL PARIKH

Versus

STATE OF GUJ

Appearance:

MR JM PANCHAL for Petitioner

MR SP DAVE, LD APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/04/98

ORAL JUDGEMENT

1. This appeal has been directed against the impugned judgment and order dated 24/2/1986 rendered by the learned Special Judge, Ahmedabad (Rural) at Narol (now at Mirzapur) in Special Case No. 4 of 1985. The appellant, hereinafter referred to as 'the accused', came to be convicted for the offence punishable u/S. 5(2) read with section 5 (1)(d) of the Prevention of

Corruption Act, 1947 (for short 'PC Act') and section 161 of the Indian Penal Code (for short 'IPC'). He was sentenced to suffer rigorous imprisonment (RI) for a period of one year and to pay fine of Rs.200/- and in default to suffer simple imprisonment of two months for the offence punishable u/S. 5(2) read with section 5(1)(d) of the PC Act. No separate sentence for the offence punishable u/S. 161 of the IPC was passed.

2. It has been the prosecution case that the complainant Jayantibhai Bhikhabhai Parmar was working as a Compounder in a dispensary. He had taken up the course of Binder in I.T.I. and had enrolled his name as a handicapped person for the purpose of getting employment, in the Employment Exchange. He got the opportunity of being interviewed for the post of Assistant Binder under the Directorate of Printing and Stationary at Ahmedabad. It seems that the interviews were taken in March 1984 as recorded by the learned Special Judge, but as per the evidence of the Investigating Officer the interviews were taken in March 1983. The accused at the relevant point of time in the year 1984 was serving in the Head Office, namely, the office of the Director, Printing and Stationary at Ahmedabad and came to be transferred as a Peon in the Store Section under the Directorate at Ahmedabad. He was so transferred with effect from March 1984. The prosecution alleged that on 15/5/1984 the accused visited the complainant at his house and told him that he would have to pay money if he wanted to get his order of appointment as Assistant Binder issued. The accused also told the complainant that he was serving as a Peon in the Store Department in the Government Photo Litho Press at Ahmedabad. This was the first meeting between the accused and the complainant and during the course of such meeting the accused asked the complainant to pay Rs.2,000/- out of which Rs.1,000/- should be paid before the order of appointment was actually issued and to pay remaining Rs.1,000/- after the order of appointment was received by the complainant. The accused told the complainant that the first instalment of Rs.1,000/- should be paid before the issue of the order at some place near Mohan Talkies on 16/5/1984. The complainant however, did not go to that place on 16/5/1984 and, therefore, accused again went to the house of the complainant on 17/5/1984 and inquired of him why he did not come to the place near Mohan Talkies on 16/5/1984 as agreed. The complainant in reply informed the accused that he was a poor person not in a position to raise that amount of Rs.1,000/- at a time. On that occasion the accused told him that he (complainant) should pay the said amount in monthly instalments of

Rs.500/- each after he would join the service. On that occasion the accused informed the complainant that he would accordingly get the order of appointment issued two days thereafter. The complainant in the process received the appointment as Assistant Binder in the Government Photo Litho Press at Ahmedabad on 19/5/1984. He went to resume the service on or around 23/5/1984 when he was informed to join on the next day. The accused also inquired of the complainant why he did not resume service on 23/5/1984 itself and the complainant informed the accused about what happened on 23/5/1984.

3. It has been alleged by the prosecution that on 26/6/1984 at about 2.00 O'clock in the after-noon the accused met the complainant in the office and inquired of him whether he had received his salary. The complainant replied in the negative. The accused then told him that he would get his salary on the next day i.e. 27/6/1984 and he should keep ready Rs.500/-. The complainant has then approached one Bhagvatprasad V. Shukla serving in the same office and informed him about the accused, a peon in the office, having demanded money from him as aforesaid. In view of such a grievance expressed by the complainant one application was got prepared through one Parshotambhai Vankar and the application was given to the President of the Employees' Union of the Government Photo Litho Press with a copy thereof having been sent to the office of the Anti-Corruption Bureau (ACB) at Ahmedabad. On 27/6/1984 the complainant received Rs.604.75 by way of his salary. Thereafter on 29/6/1984 the accused went to the house of the complainant and inquired of him if the arrangement for money was made. The complainant informed that the arrangement could not be made and, therefore, the accused left saying that just as he could manage the appointment order issued he could also manage to issue order of removal of the complainant from service and that the money should be kept ready on the next proposed date, namely 2/7/1984 between 8.00 p.m. and 9.00 p.m. Under the aforesaid circumstances, the complainant approached the ACB office at Ahmedabad and gave his complaint as per the facts noted hereinabove. He was informed to come to the ACB office on the next day during evening time with the amount of Rs.500/- to be given to the accused by way of illegal gratification. Accordingly, the complainant went to the office of ACB on 2/7/1984. Necessary arrangement of laying trap was made at that office by calling the panchas, by performing the experiment of anthracene powder and ultra violet lamp, and by seeing that the Muddamal currency notes of Rs.500/- in the denomination of Rs.100/- each were placed in the right side upper pocket of the complainant's Bush shirt with

instructions not to touch the same until the accused would demand money from him as agreed. The complainant was also informed to initiate talk with regard to his appointment order and the amount of Rs.500/- which he arranged in respect thereof as per the earlier demand made by the accused. The panch witness no. 1 was instructed to remain with the complainant all throughout to see and observe all that would happen at the time of the incident to follow. The other members of the raiding party were to remain in the near about place and in simple dress. A pre-arranged signal with regard to speaking loudly for bringing tea was to be given as soon as the accused would accept the amount of illegal gratification of Rs.500/-. The members of the family to which the complainant belongs were instructed before hand not to remain at home. The preliminary portion of the panchnama was prepared with regard to arrangement of trap being laid. The complainant, panch no. 1 and the members of the raiding party, then, went to the place of the complainant. The complainant and panch no. 1 sat on a coat in the kitchen room of the complainant's house. The accused is said to have reached the complainant's house at about 8.45 p.m. and after some preliminary talks the accused inquired whether the money was ready. He also inquired about who the person (panch no.1) was. The complainant informed the accused that he was of is near relation. When the inquiry about the money was made as aforesaid, the complainant replied that the money was ready. The accused then asked to give the money and the complainant took out the tainted currency notes placed in the pocket of his Bush shirt and handed them over to the accused, who took them up with his left hand. The accused counted the notes with both his hands. The complainant then gave a signal by shouting as per the prior arrangement. The members of the raiding party rushed there and they found five currency notes in the hands of the accused. Once again necessary experiment of ultra violet lamp was performed for confirming that the accused had received the notes tainted with the anthracene powder. The details with regard to what happened at the place of the complainant have been recorded in the second part of the Panchnama.

4. Upon the conclusion of the investigation a charge-sheet was filed and the accused came to be charged with the offences as aforesaid and tried for the same. His further statement was recorded u/S. 313 of the Code of Criminal Procedure, 1973 (II of 1974). He also had given his written statement exh. 26. The learned Special Judge did not accept the defence of the accused and rendered conviction and sentence as aforresaid.

5. I have heard learned counsel appearing for the appellant and Ld. A.P.P. for the State. It has been submitted that the defence set out by the accused stood probablised from the prosecution evidence itself. It has not been in dispute that there was no pre-arranged talk between the complainant and the accused at the time of actual raid. The only talk which was between the complainant and the accused was with regard to asking about money and giving about money. There was no indication about the purpose for which the money was demanded or the purpose for which the money was accepted at the time of the actual incident of trap. In the background of such a state of prosecution evidence with regard to actual trap the evidence with regard to what transpired before the trap incident was read before this Court. It was submitted from the reading of this evidence that the complainant's evidence was not corroborated by any other evidence and, therefore, if the complainant's evidence was not accepted in so far as what happened prior to the actual trap incident, then the prosecution could not be said to have established the offence charged against the appellant beyond reasonable doubt in the face of the defence which the accused has taken before the learned Special Judge.

6. In reply, Mr. S.P. Dave, Ld. A.P.P. for the State made reference to number of circumstances which on the preponderance of probabilities would clearly lend support to the complainant's evidence with regard to what transpired between the complainant and the accused prior to the actual trap incident.

7. The defence in the background of which the aforesaid submissions have been made might be stated in brief :-

Accordingly the accused came into contact with the complainant in the month of June 1984 as both of them used to meet for tea. On such occasions the accused used to tell the complainant about his difficult financial position. With regard to his difficult financial position it had been his defence that in his family he had his wife, two daughters, one son, one younger brother and a widow mother. He was only earning member in the family. He was getting in all Rs.575/- p.m. and after deduction, his carry home salary was Rs350/- p.m. His youngest daughter aged 6 years then had a hole in her trachea. She, therefore, required permanent treatment. There had been gradual enlargement of middle portion of her chest. At the relevant point of time the illness got

aggravated. Consequently the accused had faced unexpected financial hardship on account of high cost of treatment. His daughter was advised to be operated in the month of June 1984. Under such circumstances the accused was required to borrow money from his friends, companions and other persons. There was no other course except to borrow money and to pay back the same in instalments. Under such circumstances, he had suggested the complainant to advance a sum of Rs.2,000/- and if he was not in a position to pay Rs.2,000/- at a time, he should atleast provide Rs.500/to him. The complainant had first expressed his inability to help the accused. But ultimately upon the accused telling him for the help repeatedly he assured the accused that he would help him if he could manage the amount. The accused had an occasion to meet the complainant on 26/6/1984 for the purpose, as according to the accused it was the day of salary and the accused requested complainant to provide for Rs.500/- as his daughter was seriously ill. At that time the complainant told him to come to his house on 29/6/1984 and accordingly he went there during night time, but the complainant told him that he had given money to one of his acquaintances and he would get back the money on Monday - 2/7/1984. Accordingly the accused was required to see the complainant on 2/7/1984 for the purpose of getting the amount of Rs.500/- by way of advance.

8. In the background of the aforesaid defence of the accused, the evidence and the judgment of the trial Court were read before this Court.

9. Having given my anxious thought to the facts of the prosecution case as well as the evidence adduced before the learned Special Judge, I am of the opinion that the learned Special Judge has given cogent reasons for rendering the conviction of the accused as aforesaid. The salient features of the prosecution case might be summarised :

- I. There was no enmity between the complainant and the accused and, therefore, there was hardly any scope for the complainant to falsely implicate the accused for the charge of corruption as per the facts noted hereinabove.
- II There was no such prior relation between the complainant and the accused which would lead the accused to suggest the complainant for advancing money to the accused as per the facts of the defence noted hereinabove.
- III. The accused was in pressing need of money as per

the detailed facts set out by him in his defence and noted hereinabove. It would therefore be quite natural for him to indulge in unlawful transaction as per the facts of the prosecution case noted hereinabove.

10. Hence, in the peculiar facts and circumstances of this case, the detailed submissions made by Mr. Panchal, learned counsel for the appellant cannot be accepted. It would not be necessary to repeat the discussion of the prosecution evidence as the learned Special Judge has at length dealt with the same and has also dealt with the arguments canvassed on behalf of the defence at length. In fact, the learned Special Judge has made a specific and positive reference to the defence of the accused while also dealing with the prosecution evidence. In that view of the matter there is no other course except to confirm the conviction rendered by the learned Special Judge. Several decisions have been read from the side of the defence as well as the State. But in view of the peculiar facts of this case, it would not be necessary to deal with the propositions of law flowing from such decisions.

11. The result is that the conviction of the accused rendered by the learned Special Judge is hereby confirmed.

SENTENCE :

I have heard the learned counsel appearing for the accused as well as the Ld. A.P.P. for the State on the question of sentence. It is not understandable how the question of sentence in the context of the special circumstances set out by the accused in his defence has escaped the attention of all concerned at the time of trial. One of the special circumstances which can be noticed from the aforesaid detailed facts of the defence is that the youngest daughter of the accused was at the relevant time suffering from a serious ailment of there being hole in her trachea. The detailed facts with regard to this need not be repeated here. Suffice it to say that there were compelling circumstances which led the accused to indulge in the unlawful transaction as aforesaid. Bearing in mind such circumstances, the minimum sentence prescribed under the relevant provisions of the PC Act could not have been imposed, since reference has been made to the defence of the accused and since there is no controversy with regard to aforesaid special circumstances appearing in the defence. There is no reason why the same be not accepted for the purpose of imposing sentence less than minimum prescribed under the

statute. Besides, nearly 14 years have passed since the date of incident. Hence, the order of substantive sentence will have to be set aside and instead following order will have to be passed :-

The impugned order of sentence whereby the accused was sentenced to suffer RI for a period of one year as aforesaid is hereby set aside and instead he is directed to suffer sentence till the rising of the Court. Sentence of fine, however, is hereby confirmed.

The appeal is accordingly partly allowed.

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PVR cr.a37386j.